

STATE OF NEW YORK

8629

IN SENATE

March 23, 2022

Introduced by Sen. JORDAN -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law and the economic development law, in relation to enacting the "Growing the Advanced Media Economy Act"; and to provide for the repeal of certain provisions upon the expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "Growing
2 the Advanced Media Economy Act".

3 § 2. The tax law is amended by adding a new section 45 to read as
4 follows:

5 § 45. Empire state digital gaming media production credit. (a) Allow-
6 ance of credit. (1) A taxpayer which is a digital gaming media
7 production entity engaged in qualified digital gaming media production,
8 or who is a sole proprietor of or a member of a partnership, which is a
9 digital gaming media production entity engaged in qualified digital
10 gaming media production, and is subject to tax under article nine-A or
11 twenty-two of this chapter, shall be allowed a credit against such tax
12 to be computed as provided herein.

13 (2) (i) The amount of the credit shall be the product (or pro rata
14 share of the product, in the case of a member of a partnership or limit-
15 ed liability company) of twenty-five percent and the eligible production
16 costs of one or more qualified digital gaming media productions.

17 (ii) Notwithstanding the provisions of subparagraph (i) of this para-
18 graph, the amount of the credit shall be the product (or pro rata share
19 of the product, in the case of a member of a partnership or limited
20 liability company) of thirty percent and the eligible production costs
21 of one or more qualified digital gaming media productions for a taxpayer
22 qualifying for a credit under this section who: (A) is the principal
23 person or sole proprietor of the business; (B) has graduated within the
24 past five years from a college located in New York; and (C) establishes

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 and maintains such business in the regional economic development council
2 region in which the college was located.

3 (3) Eligible digital gaming media production costs for a qualified
4 digital gaming media production incurred and paid in this state but
5 outside such metropolitan commuter transportation district shall be
6 eligible for a credit of ten percent of such eligible production costs
7 in addition to the credit specified in paragraph two of this subdivi-
8 sion.

9 (4) Eligible production costs shall not include those costs used by
10 the taxpayer or another taxpayer as the basis calculation of any other
11 tax credit allowed under this chapter or allowed in any other state.

12 (b) Allocation of credit. The aggregate amount of tax credits allowed
13 under this section, subdivision fifty-five of section two hundred ten-B
14 and subsection (nnn) of section six hundred six of this chapter in any
15 taxable year shall be twenty-five million dollars. The aggregate amount
16 of credits for any taxable year must be distributed on a regional basis
17 as follows: twenty-five percent of the aggregate amount of credits shall
18 be available for qualified digital gaming media productions that incur
19 at least sixty percent of eligible production costs for a qualified
20 digital gaming media production in region one; twenty percent of the
21 aggregate amount of credits shall be available for qualified digital
22 gaming media productions that incur at least sixty percent of eligible
23 production costs for a qualified digital gaming media production in
24 region two; and fifty-five percent of the aggregate amount of credits
25 shall be available for qualified digital gaming media productions that
26 incur at least sixty percent of eligible production costs for a quali-
27 fied digital gaming media production in region three. If such regional
28 distribution is not fully allocated in any taxable year, the remainder
29 of such credits shall be available for allocation to any region in the
30 subsequent tax year. For the purposes of this section, region one shall
31 contain the city of New York; region two shall contain the counties of
32 Westchester, Rockland, Nassau and Suffolk; and region three shall
33 contain any county not contained in regions one and two. Such credit
34 shall be allocated by the empire state development corporation among
35 taxpayers in order of priority based upon the date of filing an applica-
36 tion for allocation of digital gaming media production credit with such
37 office. If the total amount of allocated credits applied for in any
38 particular year exceeds the aggregate amount of tax credits allowed for
39 such year under this section, such excess shall be treated as having
40 been applied for on the first day of the subsequent taxable year.

41 (c) Definitions. As used in this section:

42 (1) "Qualified digital gaming media production" means:

43 (i) a website, the digital media production costs of which are paid or
44 incurred predominately in connection with:

45 (A) video simulation, animation, text, audio, graphics or similar
46 gaming related property embodied in digital format; and

47 (B) interactive features of digital gaming (e.g., links, message
48 boards, communities or content manipulation);

49 (ii) video or interactive games produced primarily for distribution
50 over the internet, wireless network or successors thereto;

51 (iii) animation, simulation or embedded graphics digital gaming
52 related software intended for commercial distribution regardless of
53 medium; and

54 (iv) a digital gaming media production in which qualified digital
55 gaming media production costs equal to or are in excess of seven thou-
56 sand five hundred dollars if incurred and paid in this state in twelve

1 months preceding the date on which the credit is claimed. Provided,
2 however, if such a production costs are incurred and paid outside the
3 metropolitan commuter transportation district in this state, such
4 production costs shall be equal to or in excess of three thousand seven
5 hundred fifty dollars to be a qualified digital gaming media production
6 for purposes of this paragraph. A qualified digital gaming media
7 production does not include a website, video, interactive game or soft-
8 ware that is used predominately for: electronic commerce (retail or
9 wholesale purposes other than the sale of video or interactive games),
10 gambling (including activities regulated by a New York gaming agency),
11 exclusive local consumption for entities not accessible by the general
12 public including industrial or other private purposes, and political
13 advocacy purposes.

14 (2) "Digital gaming media production costs" means any costs for prop-
15 erty used and wages or salaries paid to individuals directly employed
16 for services performed by those individuals directly and predominately
17 in the creation of a digital gaming media production or productions.
18 Digital gaming media production costs include but shall not be limited
19 to payments for property used and services performed directly and predo-
20 minately in the development (including concept creation), design,
21 production (including concept creation), design, production (including
22 testing), editing (including encoding) and compositing (including the
23 integration of digital files for interaction by end users) of digital
24 gaming media. Digital gaming media production costs shall not include
25 expenses incurred for the distribution, marketing, promotion, or adver-
26 tising content generated by end-users or other costs not directly and
27 predominately related to the creation, production or modification of
28 digital gaming media. In addition, salaries or other income distribution
29 related to the creation of digital gaming media for any person who
30 serves in the role of chief executive officer, chief financial officer,
31 president, treasurer or similar position shall not be included as
32 digital gaming media production costs. Furthermore, any income or other
33 distribution to any individual who holds an ownership interest in a
34 digital gaming media production entity shall not be included as digital
35 gaming media production costs.

36 (3) "Qualified digital gaming media production costs" means digital
37 gaming media production costs only to the extent such costs are attrib-
38 utable to the use of property or the performance of services by any
39 persons within the state directly and predominantly in the creation,
40 production or modification of digital gaming related media. Such total
41 production costs incurred and paid in this state shall be equal to or
42 exceed seventy-five percent of total cost of an eligible production
43 incurred and paid within and without this state.

44 (d) Cross-references. For application of the credit provided for in
45 this section, see the following provisions of this chapter:

46 (1) Article nine-A: section two hundred ten-B, subdivision fifty-five.

47 (2) Article twenty-two: section six hundred six, subsection (i), para-
48 graph one, subparagraph (B), clause (xlvi).

49 (3) Article twenty-two: section six hundred six, subsection (nnn).

50 § 3. Section 210-B of the tax law is amended by adding a new subdivi-
51 sion 55 to read as follows:

52 55. Empire state digital gaming media production credit. (a) Allow-
53 ance of credit. A taxpayer who is eligible pursuant to section forty-
54 five of this chapter shall be allowed a credit to be computed as
55 provided in such section forty-five against the tax imposed by this
56 article.

(b) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, that if the amount of the credit allowable under this subdivision for any taxable year reduces the tax to such amount, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter, provided, however, no interest shall be paid thereon.

§ 4. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law is amended by adding a new clause (xlvi) to read as follows:

<u>(xlvi) Empire state digital gaming media production credit</u>	<u>Amount of credit under subdivision fifty-five of section two hundred ten-B</u>
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§ 5. Section 606 of the tax law is amended by adding a new subsection (nnn) to read as follows:

(nnn) Empire state digital gaming media production credit. (1) Allowance of credit. A taxpayer who is eligible pursuant to section forty-five of this chapter shall be allowed a credit to be computed as provided in such section forty-five against the tax imposed by this article.

(2) Application of credit. If the amount of the credit allowable under this subsection for any taxable year exceeds the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded as provided in section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

§ 6. The state commissioner of economic development, after consulting with the state commissioner of taxation and finance, shall promulgate regulations by December 31, 2022 to establish procedures for the allocation of tax credits as required by subdivision (a) of section 45 of the tax law. Such rules and regulations shall include provisions describing the application process, the due dates for such applications, the standards which shall be used to evaluate the applications, the documentation that will be provided to taxpayers substantiate to the New York state department of taxation and finance the amount of tax credits allocated to such taxpayers, under what conditions all or a portion of this tax credit may be revoked, and such other provisions as deemed necessary and appropriate. Notwithstanding any other provisions to the contrary in the state administrative procedure act, such rules and regulations may be adopted on an emergency basis if necessary to meet such December 31, 2022 deadline.

§ 7. The economic development law is amended by adding a new section 242 to read as follows:

§ 242. Reports on the digital gaming industries in New York. 1. The empire state development corporation shall file a report on a biannual basis with the director of the division of the budget and the chairpersons and ranking members of the assembly ways and means committee and senate finance committee. The report shall be filed no later than thirty days before the mid-point and the end of the state fiscal year. The first report shall cover the calendar half year that begins on January first, two thousand twenty-four. Each report must contain the following information for the covered calendar half year:

(a) the total dollar amount of credits allocated pursuant to section forty-five of the tax law during the half year, broken down by month;

1 (b) the number of digital gaming projects, which have been allocated
2 tax credits of less than one million dollars per project, and the total
3 dollar amount of credits allocated to those projects distributed by
4 region pursuant to subdivision (b) of section forty-five of the tax law;

5 (c) the number of digital gaming projects, which have been allocated
6 tax credits of more than one million dollars, and the total dollar
7 amount of credits allocated to those projects distributed by region
8 pursuant to subdivision (b) of section forty-five of the tax law;

9 (d) a list of each eligible digital gaming project, which has been
10 allocated a tax credit enumerated by region pursuant to subdivision (b)
11 of section forty-five of the tax law, and for each of those projects,
12 (i) the estimated number of employees associated with the project, (ii)
13 the estimated qualifying costs for the projects, (iii) the estimated
14 total costs of the project, (iv) the credit eligible employee hours for
15 each project, and (v) total wages for such credit eligible employee
16 hours for each project; and

17 (e) (i) the name of each taxpayer allocated a tax credit for each
18 project and the county of residence or incorporation of such taxpayer
19 or, if the taxpayer does not reside or is not incorporated in New York,
20 the state of residence or incorporation; however, if the taxpayer claims
21 a tax credit because the taxpayer is a member of a limited liability
22 company, a partner in a partnership or a shareholder in a subchapter S
23 corporation, the name of each limited liability company, partnership or
24 subchapter S corporation earning any of those tax credits must be
25 included in the report instead of information about the taxpayer claim-
26 ing the tax credit, (ii) the amount of tax credit allocated to each
27 taxpayer; provided however, if the taxpayer claims a tax credit because
28 the taxpayer is a member of a limited liability company, a partner in a
29 partnership or a shareholder in a subchapter S corporation, the amount
30 of tax credit earned by each entity must be included in the report
31 instead of information about the taxpayer claiming the tax credit, and
32 (iii) information identifying the project associated with each taxpayer
33 for which a tax credit was claimed under section forty-five of the tax
34 law.

35 2. The empire state development corporation shall file a report on a
36 triennial basis with the director of the division of the budget and the
37 chairpersons of the assembly ways and means committee and senate finance
38 committee. The first report shall be filed no later than March first,
39 two thousand twenty-five. The report must be prepared by an independent
40 third party auditor and include:

41 (a) information regarding the empire state digital gaming production
42 credit program including the efficiency of operations, reliability of
43 financial reporting, compliance with laws and regulations and distrib-
44 ution of assets and funds;

45 (b) an economic impact study prepared by an independent third party of
46 the program with special emphasis on the regional impact by region and
47 the total dollar amount of credits allocated to those projects distrib-
48 uted by region pursuant to subdivision (b) of section forty-five of the
49 tax law; and

50 (c) any other information or statistical information that the commis-
51 sioner of economic development deems to be useful in analyzing the
52 effects of the programs.

53 § 8. a. The commissioner of the empire state development corporation
54 shall undertake a market study to examine and make recommendations
55 regarding reducing barriers of entry and improving the state economic
56 climate for game developers in the State of New York. For the purposes

1 of this section, "game developer" shall mean any sole proprietor or
2 partnership which creates content defined under paragraph (ii) of subdi-
3 vision (c) of section 45 of the tax law.

4 b. Such study shall examine differentials in the regulatory and statu-
5 tory obligations for game developers compared to those in other states,
6 possible costs incurred by game developers for regulatory and statutory
7 compliance, availability of qualified software developers within New
8 York State, possible agreements between developers and institutions of
9 higher education within the State including the state university of New
10 York, potential marketing efforts by the corporation and other state
11 agencies, and any other relevant topic as determined by the commissioner
12 of the empire state development corporation.

13 c. In conducting such study and preparing recommendations, the commis-
14 sioner shall seek the input of members of the game developer industry.

15 d. On or before November 1, 2022, the commissioner of the empire state
16 development corporation shall report to the governor and legislature on
17 the results of such study, together with recommendations for removing
18 barriers of entry and improving economic opportunity for game developers
19 in the state of New York.

20 § 9. This act shall take effect immediately and shall apply to taxable
21 years beginning on January 1, 2022 and before January 1, 2027; provided
22 that sections two through five of this act shall expire and be deemed
23 repealed December 31, 2026.